

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

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LEONARD MASON,

USDS SDNY
DOCUMENT
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DOC #: _____
DATE FILED: 3-5-09

Petitioner,

04 Civ. 3606 (PKC)

-against-

GARY GREENE, Superintendent,

ORDER

Respondent.

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P. KEVIN CASTEL, U.S.D.J.

The petition for a writ of habeas corpus was referred to Magistrate Judge Henry B. Pitman for a report and recommendation. (Nov. 18, 2005; Docket Entry # 11.) Thereafter Magistrate Judge Pitman issued a thorough 32-page Report and Recommendation (“R&R”) recommending that the petition be denied in its entirety, rejecting petitioner’s claims that he was denied his due process right to a fair trial because the evidence was insufficient to establish his guilt beyond a reasonable doubt and because the prosecutor misstated the law of burglary to the jury. (May 13, 2008; Docket Entry # 12.)

The R & R advised the parties that they had ten days from service of the R & R to file any objections, and warned that failure to timely file such objections would result in waiver of any right to object. Petitioner sought and received an extension until August 27, 2008 to file objections. (July 25, 2008; Docket Entry #14.) Thereafter—and again at petitioner’s request—I further extended the time for objections to September 19, 2008. (Aug. 26, 2008; Docket Entry #15.) As of the date of this Order, no objections have been filed and no request for a further extension of time to object has been made. The R & R expressly called petitioner’s attention to Rule 72(b), Fed. R. Civ. P., and 28 U.S.C. § 636(b)(1). Plaintiff received clear notice of the

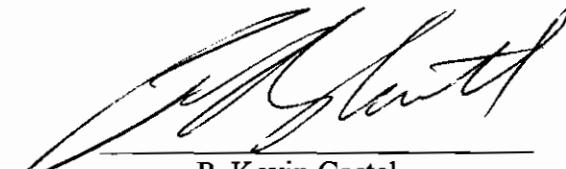
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consequences of the failure to object and has waived the right to object to the R & R or obtain appellate review. See Frank v. Johnson, 968 F.2d 298, 300 (2d Cir.1992). No circumstances are presented which would cause this Court to depart from that rule in the interest of justice. Id.

The R&R is adopted in its entirety and the petition is DENIED. The Clerk shall enter judgment for respondent.

Petitioner has not made a substantial showing of the denial of a constitutional right and, accordingly, a certificate of appealability will not issue. 28 U.S.C. § 2253. The Court certifies that any appeal from this order would not be taken in good faith. 28 U.S.C. § 1915(a)(3).

SO ORDERED.



P. Kevin Castel  
United States District Judge

Dated: New York, New York  
March 5, 2009